Teobros Development Sdn Bhd v Tenaga Nasional Berhad

HIGH COURT (MELAKA) — CIVIL SUIT NO 22—93 OF 2007
MOHTARUDIN BAKI J
1 AUGUST 2007

Civil Procedure — Injunction — Interlocutory injunction — Land bought at public auction showed no endorsement of any right of way of the defendant — Order issued by District Land Administrator allowing defendant to enter land to erect electricity pylons — Defendant had not deposit a copy of the Land Administrator's order for registration with the Registrar of Land Titles — Whether the plaintiff had shown serious bona fide issues

Land Law — Sale of land — Public auction — Searches conducted showed no endorsement of any right of way of the defendant — Order issued by District Land Administrator allowing defendant to enter land to erect electricity pylons — Whose duty to deposit Land Administrator's order for registration with the Registrar of Land Titles — Electricity Supply Act 1990 s 11(7), (10)

The plaintiff had bought six lots of land at a public auction held on 23 April 2007 at the High Court at Melaka and had become the owner of those land. Official searches conducted by the plaintiff on the Register Document of Title of the six lots of land before the auction showed no endorsement at all of any right of way of the defendant Tenaga Nasional Berhad. Trouble started when the plaintiff's architect and town planner had completed drawing their plans to turn the six lots of land into a housing estate and they made enquiries with the defendant about future supply of electricity into the proposed new housing estate. While they were making the enquiries, the defendant disclosed that electricity pylons would be constructed across three out of the six lots of land bought by the plaintiff, namely GRN 20737 Lot No 987, GRN 20738 Lot No 988 and GRN 6217 Lot No 989. In opposing the plaintiff's application for interlocutory injunction, the defendant filed an affidavit which disclosed that in the year 1997, the defendant had already intended to perform a project known as 'Projek Talian Penghantaran 275/132 kV dari Kelemak, Melaka ke Sg Mati, Johor' and sent out official notices to the previous owner of the three affected lots. The defendant also said that an order was issued by the District Land Administrator pursuant to s 11(7) Electricity Supply Act 1990 ('the Act') to allow the defendant to enter the three affected lots to erect electricity pylons. The defendant admitted that they did not deposit a copy of the Land Administrator's order for registration with the Registrar of Land Titles. However, the defendant's counsel took the stand that it was not the defendant's duty to do so under s 11(10) of the Act. Counsel for the defendant said it was the Land Administrator's duty to do so because he submitted that the three affected lots of land were 'Land Office titles'. In other words, he submitted that the Land Administrator wore two hats; as land administrator and also as Registrar of Land Titles.

Held, allowing the plaintiff's application:

(1) The three affected lots, namely GRN 20737 Lot No 987, GRN 20738 Lot No 988 and GRN 6217 Lot No 989 refer to Grant (or in Malay 'Geran') which were 'Registry titles' under the control of the Registrar of Land Titles. They were not 'Land Office titles'. In other words, after the Land Administrator made an order under Electricity Supply Act 1990 it was necessary for a copy of the order to be deposited with the Registrar of Land Titles in a different office, to be registered on the Register Document of Title of the three affected lots. The Registrar of Land Titles and the Land Administrator were two different positions within the administration of the Melaka State Authority (see para 9).

(2) Although s 11(10) did not expressly say it was the defendant's duty to deposit the Land Administrator's order with the Registrar of Land Titles, a purposive and common sense approach in reading that section would make it obvious that it must be the defendant's duty to do so. If someone obtained an order in his favour in a court, that person who wanted the benefit of that order must present it to the Registrar of Land Titles for registration. In this case, it was obvious that the Land Administrator's order was exclusively for the benefit of the defendant. Moreover throughout all these years it had always been the defendant who deposited a copy of the Land Administrator's order for registration with the Registrar of Land Titles. This amounted to an implied admission by the defendant that it was indeed their duty under s 11(10) to do so (see paras 10–11).

(3) The 'right of way' that might be granted by the Land Administrator under s 11(7) to the defendant was not a permanent and indefeasible right. Upon application by the landowner under s 14 of the Act, the State Authority may at any time issue an order to require the defendant to remove the electricity line out of the land and may even order the defendant to bear 'the cost of executing the removal or alteration'. Therefore, the defendant had a temporary right to enter private land to erect electricity pylons for their transmission lines if they used the Act, and a permanent right if and only if they chose to acquire the land permanently by using the Land Acquisition Act 1960 (see paras 12–13).

(4) No disruption of electricity supply would be caused by an injunction to restrain the defendant from entering the three affected lots at this stage. The defendant failed to state in their affidavits when they intended to enter the three affected lots. Since they had delayed for nearly 10 years, it was possible that they intended to delay for a few more years. At this interlocutory stage, it was only necessary to consider whether the plaintiff had shown serious bona fide issues and examine the balance of convenience. Following the judgment of the Federal Court in the *Pemungut Hasil Tanah, Daerah Barat Daya, Pulau Pinang v Ong Gaik Kee* [1983] 2 MLJ 35, it was obvious that the defendant's delay of almost 10 years must be held to be unreasonable. As it was now necessary to preserve the status quo and the balance of convenience was in favour of the plaintiff, the plaintiff's application for an interlocutory injunction was allowed (see paras 17, 19 & 23).

[Bahasa Malaysia summary

Plaintif telah membeli enam lot tanah di satu lelongan awam yang diadakan pada 23 April 2007 di Mahkamah Tinggi Melaka dan telah menjadi pemilik tanah tersebut. Satu carian rasmi telah dilakukan oleh plaintif terhadap Daftar Dokumen Hak milik ke atas enam lot tanah tersebut sebelum lelongan awam yang menunjukkan tiada pengindorsan langsung terhadap laluan sah defendan iaitu Tenaga Nasional Berhad. Persengketaan bermula apabila arkitek dan perancang bandar plaintif telah menyiapkan lukisan pelan mereka untuk menukarkan enam lot tanah tersebut kepada satu estet perumahan dan mereka telah membuat pertanyaan dengan defendan akan bekalan elektrik di masa hadapan ke estet perumahan yang dicadangkan tersebut. Sementara mereka membuat pertanyaan tersebut, defendan telah mendedahkan bahawa pilon-pilon elektrik akan dibina di tiga daripada enam lot tanah yang dibeli oleh plaintif, iaitu GRN 20737 Lot No 987, GRN 20738 Lot No 988 dan GRN 6217 Lot No 989. Dalam menentang permohonan plaintif untuk satu injunksi interlokutori, defendan telah memfailkan satu afidavit yang menyatakan bahawa pada tahun 1997, defendan telah ingin menjalankan satu projek yang dikenali sebagai 'Projek Talian Penghantaran 275/132 kV dari Kelemak, Melaka ke Sg Mati, Johor' dan telah menghantar notis-notis rasmi kepada pemilik-pemilik tiga lot yang terjejas sebelum ini. Defendan juga menyatakan bahawa satu perintah telah dikeluarkan oleh Pentadbir Tanah Daerah menurut s 11(7) Akta Bekalan Elektrik 1990 ('Akta tersebut') yang membenarkan defendan memasuki tiga lot yang terjejas tersebut untuk memasang pilon-pilon elektrik. Defendan mengakui bahawa mereka tidak mendepositkan sesalinan perintah Pentadbir Tanah untuk didaftarkan dengan Pendaftar Hak milik Tanah. Akan tetapi peguamcara defendan menegaskan bahawa ia bukan kewajipan defendan untuk berbuat demikian di bawah s 11(10) Akta tersebut. Peguamcara defendan menyatakan bahawa ia adalah kewajipan Pentadbir Tanah untuk berbuat demikian oleh kerana tiga lot yang terjejas tersebut adalah 'hak milik Pejabat Tanah'. Dalam perkataan yang lain, beliau menghujah bahawa Pentadbir Tanah memainkan dua peranan; sebagai pentadbir tanah dan juga pendaftar hak milik tanah.

Diputuskan, membenarkan permohonan plaintif:

(1) Ketiga-tiga lot yang terjejas, iaitu GRN 20737 Lot No 987, GRN 20738 Lot No 988 dan GRN 6217 Lot No 989 merujuk kepada Geran yang merupakan 'Hak milik Daftar' di bawah kawalan Pendaftar Hak milik Tanah. Mereka bukannya 'hak milik Pejabat Tanah'. Dalam perkataan yang lain, selepas Pentadbir Tanah membuat perintah tersebut di bawah Akta Bekalan Elektrik 1990 ia adalah wajib untuk sesalinan perintah tersebut didepositkan dengan Pendaftar Hak milik Tanah di pejabat yang berlainan, untuk didaftarkan di Dokumen Pendaftar Hak milik tiga lot yang terjejas tersebut. Pendaftar Hak milik Tanah dan Pentadbir Tanah adalah dua kedudukan yang berlainan di dalam pentadbiran Pihak Berkuasa Negeri Melaka (lihat perenggan 9).

(2) Walaupun s 11(10) tidak menyatakan secara nyata bahawa ia adalah kewajipan defendan untuk mendepositkan perintah Pentadbir Tanah dengan Pendaftar Hak milik Tanah, satu pendekatan yang menitikberatkan tujuan dan akal

dalam membaca seksyen akan menjadikan ia jelas bahawa ia adalah kewajipan defendan untuk berbuat demikian. Sekiranya seseorang memperolehi perintah memihaknya di mahkamah, orang tersebut yang ingin manfaat perintah tersebut mesti membekalkannya kepada Pendaftar Hak milik Tanah untuk didaftarkan. Dalam kes ini, ia adalah jelas bahawa perintah Pentadbir Tanah adalah untuk manfaat defendan secara khususnya. Selanjutnya pada sepanjang tahun-tahun sebelum ini, ia adalah defendan yang selalunya mendepositkan sesalinan perintah Pentadbir Tanah untuk didaftarkan dengan Pendaftar Hak milik Tanah. Ini merupakan satu pengakuan tersirat oleh defendan bahawa ia sebenarnya kewajipan mereka di bawah s 11(10) untuk berbuat demikian (lihat perenggan 10–11).

(3) 'Laluan sah' yang mungkin diberikan oleh Pentadbir Tanah di bawah s 11(7) kepada defendan bukannya satu hak yang kekal dan tidak boleh disangkal. Melalui satu permohonan oleh pemilik tanah di bawah s 14 Akta tersebut, Pihak Berkuasa Negeri boleh pada bila-bila masa mengeluarkan satu perintah mengkehendaki defendan untuk mengeluarkan talian elektrik daripada tanah tersebut dan juga mungkin memerintahkan defendan membayar 'kos pengeluaran atau perubahan'. Dengan itu, defendan mempunyai hak sementara untuk memasuki tanah persendirian untuk memasang pilon-pilon elektrik untuk talian-talian pemancaran sekiranya mereka menggunakan Akta tersebut, dan satu hak tetap jika dan hanya jika mereka memilih untuk mengambil tanah tersebut secara tetap dengan menggunakan Akta Pengambilan Tanah 1960 (lihat perenggan 12–13).

(4) Tiada gangguan bekalan elektrik akan terjadi sekiranya satu injunksi untuk menghalang defendan daripada memasuki tiga lot yang terjejas tersebut pada masa kini. Defendan telah gagal menyatakan di dalam afidavit-afidavit mereka bila mereka akan masuk ke tiga lot yang terjejas tersebut. Oleh kerana mereka telah kelewatan hampir 10 tahun, kemungkinan mereka akan lewat lagi untuk beberapa tahun. Pada peringkat interlokutori ini, hanya perlu untuk dipertimbangkan sama ada plaintif telah menunjukkan isu-isu bona fide yang serius dan meneliti imbangan kemudahan. Mengikut penghakiman Mahkamah Persekutuan di dalam kes *Pemungut Hasil Tanah, Daerah Barat Daya, Pulau Pinang v Ong Gaik Kee* [1983] 2 MLJ 35, ia adalah jelas bahawa kelewatan defendan selama hampir 10 tahun mesti diputuskan sebagai tidak munasabah. Oleh kerana ia adalah perlu pada masa kini untuk mengekalkan status quo dan imbangan kemudahan memihak plaintif, permohonan plaintif untuk injunksi interlokutori dibenarkan (lihat eprenggan 17, 19 & 23).]

Notes

For cases on interlocutory injunction, see 2(2) *Mallal's Digest* (4th Ed, 2007 Reissue) paras 3224–3348.

For cases on public auction, see 2(2) *Mallal's Digest* (4th Ed, 2007 Reissue) paras 3224–3348.

Cases referred to

Keet Gerald Francis Noel John v Mohd Noor bin Abdullah & Ors [1995] 1 MLJ 193 (refd)

A *Pemungut Hasil Tanah, Daerah Barat Daya, Pulau Pinang v Ong Gaik Kee* [1983] 2 MLJ 35 (refd)
Pow Hing & Anor v Registrar of Titles, Malacca [1981] 1 MLJ 155 at p 158 (refd)
Tenaga Nasional Bhd v Dolomite Industrial Park Sdn Bhd [2000] 2 MLJ 133 (refd)

B **Legislation referred to**
Electricity Supply Act 1990 ss 11(7), (10), 14
Interpretation Act 1948 and 1967
Land Acquisition Act 1960

C *Gan Techiong (Gan & Lim) for the plaintiff.*
Azlan Sulaiman (Mahir Juhari with him) (Azmi & Associates) for the defendant.

Mohtarudin Baki J:

D
[1] The defendant is a public-listed company licensed under the Electricity Supply Act 1990 to carry out the business of supplying electricity in Malaysia. The defendant has a right to enter private land to erect electricity pylons for their transmission lines but they must comply strictly with the requirements of the Electricity Supply Act 1990. Alternatively, the defendant may choose to acquire the land permanently by
E the use of the Land Acquisition Act 1960.

[2] The plaintiff commenced this civil suit against the defendant because the plaintiff had bought six lots of land at a public auction held on 23 April 2007 at the High Court at Melaka and had become the owner of those land.

F
[3] Official searches conducted by the plaintiff on the Register Document of Title of the six lots of land before the auction showed no endorsement at all of any right of way of the defendant Tenaga Nasional Berhad.

G **[4]** Trouble started when the plaintiff's architect and town planner had completed drawing their plans to turn the six lots of land into a housing estate and they made enquiries with the defendant about future supply of electricity into the proposed new housing estate. While they were making the enquiries, the defendant disclosed that electricity pylons would be constructed across three out of the six lots of land bought
H by the plaintiff, namely across GRN 20737 Lot No 987, GRN 20738 Lot No 988 and GRN 6217 Lot No 989 Mukim of Sungei Petai, Melaka ('the three affected lots').

[5] In opposing the plaintiff's application for interlocutory injunction, the
I defendant filed an affidavit which disclosed that in the year 1997, the defendant had already intended to perform a project known as 'Projek Talian Penghantaran 275/132 kV dari Kelemak, Melaka ke Sg Mati, Johor' and sent out official notices to the previous owner of the three affected lots. The defendant also said that an order was issued by the District Land Administrator pursuant to s 11(7) of the Electricity Supply Act 1990 to allow the defendant to enter the three affected lots to erect

electricity pylons. Section 11(7) expressly refers to the 'District Land Administrator' and not to the 'Registrar of Titles'. It reads as follows:

> 11.(7) Upon the conclusion of the enquiry the *District Land Administrator* may either unconditionally or subject to such terms, conditions and stipulations as he thinks fit, make an order authorizing or prohibiting any of the acts mentioned in the notice given under subsection (2). The order shall be substantially in the form set out in the Second Schedule:
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> (Emphasis added.)

[6] Section 11(7) is not the end of the story where the said s 11(7) order is concerned. The next relevant section is s 11(10), which reads as follows:

> 11.(10) Notwithstanding any written law relating to land matters, *the Registrar* —
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> (a) upon the production to him of the notice issued by the licensee under subsection (2) together with the statement by the District Land Administrator that no objection had been lodged by any of the persons mentioned in subsection (3); or
>
> (b) *upon the production to him of the original order made under subsection (7) and upon the deposit with him of a certified copy of such order,*
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> shall cause to be made on the *register document of title* relating to the land *affected by the* notice or *order* as the case may be, *a note of the existence of the rights under such* notice or *order*.
>
> (Emphasis added.)

[7] It is to be noted that s 11(10) expressly refers to the 'Registrar', that is, the Registrar of Titles and not to the 'District Land Administrator'.

[8] In this case the defendant admitted that they did not deposit a copy of the Land Administrator's order for registration with the Registrar of Land Titles. However, the defendant's counsel took the stand that it was not the defendant's duty to do so under s 11(10). Counsel for the defendant said it was the Land Administrator's duty to do so because he submitted that the three affected lots of land were 'Land Office titles'. In other words, he was submitting that the Land Administrator wears two hats; as land administrator and also as Registrar of Land Titles.

[9] With respect, the defendant's counsel's submission was wrong because the three affected lots, namely GRN 20737 Lot No 987, GRN 20738 Lot No 988 and GRN 6217 Lot No 989 refer to Grant (or in Malay 'Geran') which are 'Registry titles' under the control of the Registrar of Land Titles. They are not 'Land Office titles'. In other words, after the Land Administrator made an order under Electricity Supply Act 1990 it is necessary for a copy of the order to be deposited with the Registrar of Land Titles in a different office, to be registered on the Register Document of Title of the three affected lots. The Registrar of Land Titles here and the Land Administrator are two different positions within the administration of the Melaka State Authority.

[10] Whose duty is it to deposit the Land Administrator's order with the Registrar of Land Titles? The plaintiff's counsel submitted that it is the defendant's duty. Though s 11(10) does not expressly say it is the defendant's duty, a purposive and common sense approach in reading that section would make it obvious that it must be the defendant's duty to do so. If someone obtains an order in his favour in a court, that person who wants the benefit of that order must present it to the Registrar of Land Titles for registration. In this case, it is obvious that the Land Administrator's order was exclusively for the benefit of the defendant.

[11] Another point raised in the plaintiff's affidavit, and which was not rebutted by the defendant was the fact that throughout all these years whenever a Land Administrator's order is issued to give the defendant a right of way to enter any land, it had always been the defendant who deposited a copy of the Land Administrator's order for registration with the Registrar of Land Titles. This amounts to an implied admission by the defendant that it is indeed their duty under s 11(10) to do so.

[12] It is to be noted that the 'right of way' that may be granted by the Land Administrator under s 11(7) to the defendant is *not* a permanent and indefeasible right. It is relevant to point out that s 14 of the Electricity Supply Act 1990 starts with the heading '14 Removal or alteration of supply line, etc' and reads:

> (1) Where a supply line has been laid, or posts or equipment erected, on any land under section 11, and if *any of the persons* mentioned in section 11(3) *desires to use the land in such a manner as to render it necessary or convenient that the line*, posts or equipment *should be removed* to another part of the land, or to land at a higher or lower level, or be altered in form, he *may require the licensee, to remove* or alter the line, posts or equipment accordingly.
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> (2) (a) If the licensee omits to comply with the requisition, *the person may apply in writing to the State Authority* which may, in its discretion, after enquiring into all the facts of the case, reject the application or *make an order*, either absolutely or subject to certain conditions, *for the removal or alteration of the line*, posts or equipment. *The order shall provide for the payment of the cost of executing the removal* or alteration *by the licensee* or by the person making the application, as the State Authority may consider equitable in the circumstances of the case.
>
> (Emphasis added.)

[13] This is the position of the law because upon application by the landowner under s 14 mentioned above, the State Authority may at any time issue an order to require the defendant to remove the electricity line out of the land and may even order the defendant to bear 'the cost of executing the removal or alteration'. Therefore, the defendant has a temporary right to enter private land to erect electricity pylons for their transmission lines if they use the Electricity Supply Act 1990, and a permanent right if and only if they choose to acquire the land permanently by using the Land Acquisition Act 1960.

[14] In any event, we are at the interlocutory stage and the above facts showed that the plaintiff had raised serious bona fide issues and have satisfied the first test laid down by the Court of Appeal in *Keet Gerald Francis Noel John v Mohd Noor bin Abdullah & Ors* [1995] 1 MLJ 193 in considering applications for interlocutory injunctions. The next question is where is the balance of convenience?

[15] The defendant relied on the Court of Appeal decision in *Tenaga Nasional Bhd v Dolomite Industrial Park Sdn Bhd* [2000] 2 MLJ 133. This case must be distinguished because the facts are different. A close reading of that judgment showed that the Court of Appeal actually dismissed Tenaga Nasional Berhad's appeal with costs, but set aside the injunction and substituted it with an order for damages to be paid by Tenaga Nasional to Dolomite the landowner. The reason was because the pylons were already erected by Tenaga Nasional and already in use as part of the national electricity grid. In the *Dolomite* case, it would have caused very serious disruption of electricity supply all over the country if the pylons were to be moved.

[16] In our case here, the facts are different from *Dolomite*'s case. The defendant had intended to build pylons in the three affected lots but they have not done so yet. In other words, since they have not entered the plaintiff's land yet, it is still possible for the State Authority to decide in favour of the plaintiff and direct the defendant to re-align the supply line out of the three affected lots so that the plaintiff's housing project would not be destroyed in the future.

[17] No disruption of electricity supply would be caused by an injunction to restrain the defendant from entering the three affected lots at this stage. The defendant failed to state in their affidavits when they intend to enter the three affected lots. Since they have delayed for nearly 10 years, it is possible that they intend to delay for a few more years. The plaintiff's counsel submitted that the plaintiff is entitled to plead estoppel against the defendant due to the delay of almost 10 years, and that the plaintiff may apply for certiorari, judicial review and other orders in this case. At this interlocutory stage, it is only necessary to consider whether the plaintiff had shown serious bona fide issues and examine the balance of convenience.

[18] For the present moment, it is fair to remember that it was the defendant who caused the problems now faced by the plaintiff because the defendant failed to comply with s 11(10). Though no time limit is mentioned in that section, in a similar situation the Federal Court had applied the Interpretation Act 1948 and 1967 and ruled that a delay of seven years was unreasonable delay. The Federal Court held in *Pemungut Hasil Tanah, Daerah Barat Daya, Pulau Pinang v Ong Gaik Kee* [1983] 2 MLJ 35 at p 37 as follows:

> *It is true that s 10 of the Act does not prescribe the time within which the inquiry into the compensation must be held* but looking at the Act as a whole no one could deny that the

proceedings under the Act are meant to be in a continuous motion so that no such interruption or such undue delay or stoppage as to amount to an abandonment of the acquisition could be regarded as within this motion. Under s 38 of the Interpretation and General Clauses Ordinance 1948 it is provided that —

> *Where no time is prescribed or allowed within which anything shall be done, such thing shall be done with all convenient speed and as often as the prescribed occasion arises.*

What then is the 'convenient speed'? In our view it must be 'as soon as possible' or 'within a reasonable time', and not 'as late as possible'. Obviously what amounts to 'convenient speed' must vary from case to case and *in our judgment seven years delay is certainly not a convenient speed" as it is so far outside the normal period of time that no reasonable authority could ever regard it as reasonable. That being the case the court is entitled to strike down the impugned acquisition proceedings as illegal.*

(Emphasis added.)

[19] Following the judgment of the Federal Court in the *Ong Gaik Kee*'s case, it is obvious that the defendant's delay of almost 10 years must be held to be unreasonable.

[20] The importance of an endorsement in the Register Document of Title of a piece of land had been emphasised by the fact that under our Torrens System, the Register Document of Title is 'everything'. In *Pow Hing & Anor v Registrar of Titles, Malacca* [1981] 1 MLJ 155 at p 158, the importance of an endorsement on the Register Document of Title was emphasised by the Federal Court who held:

> A note of the service of a notice of demand on the registered proprietor in Form 6A is required by section 97(2) to be endorsed by or at the instance of the Collector on the register document of title to the land to which the notice relates. *This requirement is clearly to give notice to all and sundry with existing or prospective interests in the land in question that a forfeiture may be imminent* in the event of non-compliance by the registered proprietor with the notice of demand, and the endorsement required by section 97(2) has in our view the purpose, force and effect of a caveat to the world at large to this end.
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> (Emphasis added.)

[21] If someone making an official search cannot rely on an official search result, where else can he look to for some certainty? In our case here if the defendant had complied with the requirement to deposit a copy of the Land Administrator's order with the Registrar of Land Titles, the official searches conducted by the plaintiff before buying the three affected lots would have shown what transpired in 1997.

[22] The plaintiff had prayed for an interlocutory injunction until further order. There is nothing wrong with this because a further order would have to be made in any event either after trial or after the hearing of some other applications.

[23] As it is now necessary to preserve the status quo and the balance of convenience is in favour of the plaintiff, the plaintiff's application for an interlocutory injunction (encl 3) must therefore be allowed.

Plaintiff's application allowed.

Reported by Sally Kee